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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/743,564	03/06/2001	Ian John Smith		4049

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EXAMINER

GARBE, STEPHEN P

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 02/20/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/743,564

Applicant(s)

SMITH ET AL.

Examiner

Stephen Garbe

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 13 January 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 103-178 is/are pending in the application.
- 4a) Of the above claim(s) See Continuation Sheet is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) See Continuation Sheet is/are rejected.
- 7) ☒ Claim(s) 114, 115, 136, 137, 155, 156, 172 and 173 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

Continuation of Disposition of Claims: Claims withdrawn from consideration are 104-109, 120, 126-131, 142, 148, 149, 151, 165, 166 and 168.

Continuation of Disposition of Claims: Claims rejected are 103, 110-113, 116-119, 121-125, 132-135, 138-141, 143-147, 150, 152-154, 157-164, 167, 169-171 and 174-178.

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1. The proposed drawing changes filed on January 13, 2003, are approved.
2. All drawing objections are withdrawn in view of the proposed drawing corrections and argument.
3. Claims 104-109, 120, 126-131, 142, 148, 149, 151, 165, 166, and 168 are withdrawn from consideration under 37 CFR 1.142(b) as not being drawn to the elected species.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 174-178 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. There is no antecedent for "said closure flap which is peelable away."

6. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

7. Claims 174-178 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There is nothing in the original disclosure describing a closure flap which is both peelable, as required by this claim, and which has a line of weakness defining a portion of the closure flap which

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does not include any part of the region attached to the front face. This is a new matter rejection.

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 103, 110-113, 116, 117, and 121-124 are rejected under 35 U.S.C. 102(b) as being anticipated by the bag illustrated in Figures 1-3 of CITO-Kunststoffe, German Gebrauchsmuster No. G9003401.5 (CITO). CITO discloses all claimed features including an open end which is present prior to filling CITO's bag and which is subsequently closed with a weld seam. Note page 6 of the translation. The open end, which is formed by the top edge of the rear panel and the top edge of the closure flap, is distinct from the bag mouth which is formed by the top edge of front wall.

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 118 and 119 are rejected under 35 U.S.C. 103(a) as being unpatentable over the bag illustrated in Figures 1-3 of CITO-Kunststoffe, German Gebrauchsmuster No. G9003401.5 (CITO) in view of Moran, United States Patent No. 3,534,520. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide CITO's bag with the bottom construction disclosed by Moran, which

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includes the claimed miter seals, because Moran's bottom structure facilitates squaring up the bag bottom so that it will stand up by itself.

12. Claims 125, 132-135, 138, 139, 143, and 144 are rejected under 35 U.S.C. 103(a) as being unpatentable over the bag illustrated in Figures 1-3 of CITO-Kunststoffe, German Gebrauchsmuster No. G9003401.5 (CITO). Figures 1-3 of CITO disclose all claimed features except that the region between the tear lines 14 and 15 includes adhesive. It would have been obvious to eliminate the adhesive between tear lines 14 and 15 because the omission of an element and its function is obvious. *In re Larson*, 340 F.2d 965, 144 USPQ 347 (CCPA 1965). The elimination of the adhesive would have been further obvious because the adhesive between the tear lines is not necessary for proper functioning of the bag.

13. Claims 125, 132-135, 138, 139, 143, and 144 are rejected under 35 U.S.C. 103(a) as being unpatentable over the bag illustrated in Figures 1-3 of CITO-Kunststoffe, German Gebrauchsmuster No. G9003401.5 (CITO) in view of Roosa, United States Patent No. 5,199,792. Roosa discloses a pouch having a closure flap 28 that is secured to the front wall of the pouch only outside of tear lines 38. Accordingly, it would have been obvious to eliminate the adhesive between tear lines 14 and 15 of the CITO's closure flap, as taught by Roosa, because the adhesive is not necessary for proper functioning of the bag.

14. Claims 140 and 141 are rejected under 35 U.S.C. 103(a) as being unpatentable over CITO-Kunststoffe, German Gebrauchsmuster No. G9003401.5 (CITO), as applied to claim 139, and further in view of Moran, United States Patent No. 3,534,520. It would

have been obvious to one of ordinary skill in the art at the time the invention was made to provide CITO's bag with the bottom construction disclosed by Moran, which includes the claimed miter seals, because Moran's bottom structure facilitates squaring up the bag bottom so that it will stand up by itself.

15. Claims 145-147, 150, 152-154, and 157-161 are rejected under 35 U.S.C. 103(a) as being unpatentable over the bag illustrated in Figures 1-3 of CITO-Kunststoffe, German Gebrauchsmuster No. G9003401.5 (CITO) in view of Moran, United States Patent No. 3,534,520. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide CITO's bag with the bottom construction disclosed by Moran, which includes the claimed seal lines, because Moran's bottom structure facilitates squaring up the bag bottom so that it will stand up by itself.

16. Claims 162-164, 167, and 169-178 are rejected under 35 U.S.C. 103(a) as being unpatentable over the bag illustrated in Figures 1-3 of CITO-Kunststoffe, German Gebrauchsmuster No. G9003401.5 (CITO) in view of Moran, United States Patent No. 3,534,520. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide CITO's bag with the bottom construction disclosed by Moran, which includes the claimed seal lines, because Moran's bottom structure facilitates squaring up the bag bottom so that it will stand up by itself. It would have been obvious to eliminate the adhesive between tear lines 14 and 15 because the omission of an element and its function is obvious. *In re Larson*, 340 F.2d 965, 144 USPQ 347 (CCPA 1965). The elimination of the adhesive would have been further

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obvious because the adhesive between the tear lines is not necessary for proper functioning of the bag.

17. Claims 162-164, 167, and 169-178 are rejected under 35 U.S.C. 103(a) as being unpatentable over the bag illustrated in Figures 1-3 of CITO-Kunststoffe, German Gebrauchsmuster No. G9003401.5 (CITO) in view of Moran, United States Patent No. 3,534,520 and further in view of Roosa, United States Patent No. 5,199,792. Roosa discloses a pouch having a closure flap 28 that is secured to the front wall of the pouch only outside of tear lines 38. Accordingly, it would have been obvious to eliminate the adhesive between tear lines 14 and 15 of the CITO's closure flap, as taught by Roosa, because the adhesive is not necessary for proper functioning of the bag. It would have been further obvious to provide CITO's bag with the bottom construction disclosed by Moran, which includes the claimed seal lines, because Moran's bottom structure facilitates squaring up the bag bottom so that it will stand up by itself.

18. Claims 114, 115, 136, 137, 155, 156, 172, and 173 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

19. Applicant's arguments filed with the reply have been fully considered but they are not persuasive. The arguments with respect to CITO are not persuasive because CITO discloses a bag which is virtually identical to the elected embodiment and operates in the same manner. Note Figures 1-3 and page 4 of the enclosed translation. The unnumbered, lower-left portion of CITO's bag, as seen in Figure 1, is not open. It is



closed as clearly shown in Figures 2 and 3. Furthermore, the bag has a closure flap attached to the front wall and to the extension of the back wall. The top of the bag is open prior to filling and forms the claimed "open end," which is closed after filling and is distinct from the mouth, which is formed by the top of the front panel when the closure flap is opened.

The argument with respect to the combination of CITO and Moran beginning on page 30 is not persuasive because it is based upon the faulty premise that the bottom of the bag in Figures 1-3 is open and is actually the top. The bag bottom is clearly element 11 shown in Figure 3.

20. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

21. Any inquiry concerning this application or proceeding should be directed to Stephen Garbe who can be reached at 703-308-1207. The examiner can normally be

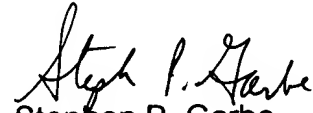
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reached Monday-Thursday between the hours of 7:15 and 4:45 and alternate Fridays between the hours of 7:15 and 3:45.

22. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young, can be reached on 703-308-2572.

23. The fax phone numbers for Technology Center 3700 are 703-872-9302 for papers filed in response to a non-final Office Action and 703-872-9303 for papers filed in response to a Final Office Action.

24. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist, whose telephone number is 703-308-1148.

  
Stephen P. Garbe  
Primary Examiner  
Group 3720